

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLN. (W) NO.1760 OF 2015

IN

WRIT PETITION NO. 5497 OF 2014 (D)

Kashibai Wd/o Fulchand Chokse

-vs-

The State of Maharashtra, Department of State Excise, thr.its Secretary and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.S.U.Bhuyar, counsel for the applicant.
Mr.Prakash Tembhare, AGP for the respondent Nos.1 to 3.
Mr.C.A.Babrekar, counsel for the petitioner.

CORAM : SMT. VASANTI A. NAIK &
A.S.CHANDURKAR, JJ.

DATE : 19.01.2016.

By this civil application, the applicant seeks a recall of the judgment, dated 26/11/2014 in Writ Petition No.5497 of 2014.

According to the applicant, there are certain disputes pending between the applicant and the petitioner in the writ petition in respect of the CL-III licence and a partition suit has been filed by the applicant against the petitioner and certain other persons pertaining to the CL-III licence and other properties. It is the case of the applicant that there were disputes between the parties in respect of the licence and in the civil suit filed by the applicant, the trial Court had passed an order of *status quo*. It is stated that in view of the order of *status quo*, it was not permissible for the petitioner to file the writ petition challenging the order of the Collector suspending the CL-III licence indefinitely. It is stated that though the fact in relation to the filing of the suit was averred in the writ petition, the petitioner had not averred that a *status quo* order was made by the trial Court.

We have heard the learned counsel for the parties and have also perused the writ petition, the judgment rendered therein as

also the documents annexed to the civil application. In the civil suit, the applicant had sought a declaration that the applicant has 1/6th share in the suit properties, which includes the CL-III licence. A permanent injunction was sought against the defendants, including the petitioner restraining them from creating third party interest or charge over the suit properties (suit properties also includes CL-III licence) till the disposal of the suit. The applicant had made a prayer for mandatory injunction directing the defendants, including the petitioner to deliver the possession of the country liquor shop to the applicant. Along with the suit, an application for temporary injunction was also filed. In the said application, a prayer for restraining the defendants from disturbing the position of the possession related to the suit properties was sought. It was mentioned that the delivery of the liquor shop to any other person should not be made by the defendants till the final disposal of the suit. A prayer was made for restraining the defendants from creating third party interest in the suit properties and delivering the actual possession of the properties till the final disposal of the suit. By the prayer for *ad interim* relief, the applicant had sought a direction to the defendants to maintain *status quo* in relation to the possession of the properties.

On a reading of the prayers made in the plaint as also the application for temporary injunction, it is clear that the only relief sought by the applicant against the defendants was that they should not deliver the possession of the liquor shop to any other person during the pendency of the suit or create third party interest in the properties. The *status quo* that is sought by the applicant relates to the aforesaid prayers. In the writ petition, the petitioner had challenged the order of the Collector indefinitely suspending the CL-III licence of the petitioner. The cause of action in the writ petition is not related to the prayers made in the civil suit or in the application for temporary injunction. The *status quo* granted by the Civil Court would relate only to the prayers made in the temporary injunction application i.e.

restraining the defendants from creating third party interest in the properties and delivering the possession of the properties to third parties. By the prayers made in the writ petition, neither is the position in regard to the possession of the CL-III licence sought to be changed, nor is a third party interest sought to be created. We do not find that the applicant was a necessary party to the writ petition, wherein the order of the Collector suspending the CL-III licence indefinitely, was challenged.

In the circumstances of the case, we reject the civil application.

JUDGE

JUDGE

KHUNTE